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NO. 82-685

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CHARLES S. CONLEY,

Petitioner,

versus

CITY OF MONTGOMERY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Whether a State highest Court may deny or frustrate the exercising of rights and immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, involving the protection of vested property rights, by asserting that an Appellant failed to raise in the trial court, the Federal Constitutional question presented on Appeal, where the trial record reveals to the contrary, that Petitioner had raised and asserted in the trial court the Federal Constitutional question as presented on Appeal?

II

Whether the judgment of a State Supreme Court should be reversed, where the trial record submitted on Appeal reveals improper conduct on the part of the trial court, in violation of a Petitioner's rights of Constitutional due process and denial of rights of equal protection as guaranteed by the Fourteenth Amendment to the Constitution of the United States and where it further appears that said Appellant Court obviously may have neglected or refused to read or construe the trial transcript and record submitted to it on Appeal?

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CHARLES S. CONLEY,

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vs.

CITY OF MONTGOMERY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

The Petitioner, CHARLES S. CONLEY respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Alabama Supreme Court entered in this proceedings on April 23, 1982.

OPINION BELOW

The opinion of the Supreme Court of Alabama in Conley v. City of Montgomery, is reported at . . . . Ala. . . . . So. 2d . . . . and is set forth in Appendix B, infra., pp. A-16–A-21. The Order and the Amendment to Order of the Circuit Court of Montgomery County, Alabama are printed in Appendix A, infra., pp. A-1–A-15.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on April 23, 1982, and Petitioner's application for Rehearing was overruled on May 21, 1982. The jurisdiction of this Court is based on 28 U.S.C. Section 1257(3), Petitioner having alleged below, and alleged herein the denial of due process, deprivation of rights, and immunities secured by the Constitution and Statutes of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE, TITLE 42
Section 1983

Civil action for deprivation of rights.

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. (R. S. Section 1979)

UNITED STATES CODE, TITLE 42
Section 1985(3)

Depriving persons of rights and privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises or another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property or deprived of having and exercising any rights or privileges of a citizen of the United States, the party so injured may have an action for the recovery of damages, occasioned by such injury or deprivation against any one or more of the conspirators. (R. S. Section 1980)

STATEMENT OF THE CASE

On March 31, 1977, Petitioner, a black lawyer, purchased by Warranty Deed, twenty duplex houses, consisting of forty low rent apartments, all located adjacent to each other on the South side of Hardaway Street, in the City of Montgomery, Alabama, near the Alabama State University Campus. Said structures were occupied by poor "black" tenants for some forty years, prior to the purchase by the Petitioner.

The property involved herein, had been owned by a

wealthy white family for more than forty years.

For several years, Respondents admitted, at the trial that the prior white owners were permitted the privilege of making periodic repairs. However, immediately after Petitioner purchased the property, the Respondents, through its Director of Housing and Code Enforcement, who admitted on cross examination that he did not personally own any rental real property himself (Tr. 217, 403), commenced on a program of constant harassment of Petitioner and ordered Petitioner to make all mandated repairs to 38 of the 40 apartments in question and refused to allow Petitioner an opportunity to make repairs, house by house, as had been extended to the former white owners, which Respondents admitted at the trial. Several of the structures were in good condition requiring no repairs, at the time.

Obsessed by obvious hatred and bias, Respondents' persistent actions indicated a determination to bulldoze Petitioner's property inspite of comprehensive repairs made by Petitioner, before and after the actions, in question, were commenced by the Respondents. At the trial, Respondents admittedly directed its employees, on repeated occasions, to break into various apartments, purportedly to make inspection, without requesting, at any time, the permission of the Petitioner or his tenants to inspect, in violation of the Petitioner's vested rights and immunities as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Respondents' Director of Housing and Code Enforcement testified that permission of the owner was totally unnecessary because of the Housing Ordinance of the City of Montgomery, No. 49-63, Section 16.1 which purportedly provided specific authority to him as the Director of the

Housing and Code Enforcement Division or any of his inspectors, ". . . to go into any house in the City of Montgomery. . ." without the owners' permission. (See Appendix C, *infra* p. A-22, A-23)

The trial record reveals that the Respondents repeatedly entered upon Petitioner's property through windows or locked doors, which were broken into, on the presumed authority that the Respondents possessed ample authority to do so, without seeking permission from the owner as to vacant apartments, even though the Director was personally acquainted with Petitioner.

From 1977 to 1981, Respondents continued to send its inspectors in groups of three or four persons, at a time, upon Petitioner's property without ever requesting Petitioner's permission to inspect. Respondents' sole witness, the Director of Housing and Code Enforcement testified that he felt like he, the Director, ". . . ought to rent. . ." one of the Petitioner's apartments, having made himself, many frequent excusions upon Petitioner's property. The Respondents' unannounced visits to Petitioner's tenants residents resulted in many of Petitioner's tenants moving because of the invasion of their privacy and the constant harassment of them by the Respondents.

Of the 20 dwellings owned by Petitioner, Respondents filed nineteen (19) separate Complaints, which alleged falsely under oath that *each* of Petitioner's houses were in a condition of collapse, open to transient and children, and constituting a fire hazard to adjoining property, even though many of the said structures were occupied by tenants, holding Leases to said property. Each of the buildings in question, were generally structurally sound, according to

testimony offered at the trial by Petitioner's witness, with the sole exception on one building.

Federal Constitutional Questions and evidence of the harassment by Respondents was presented at the trial. Petitioner testified that the Respondents, without notice, oral or written, to him instructed an independent contractor to cut several back yards at a cost of $1,223.50. Thereafter, Respondents directed the Tax Collector of Montgomery County, Alabama to collect or to place as a tax lien, said amounts against Petitioner's property, which Montgomery County Tax Collector now seeks to collect.

Pursuant to Respondents' request the trial court established a schedule of repairs designedly in a manner so as to deny and prohibit Petitioner from making repairs, himself, as is evident from the final judgment of the Circuit Court. (See Appendix A, *infra* p. A-1–A-15)

Said repair schedule was later amended by the trial court, which by design further restricted and limited the trial court's earlier order by establishing a modified time schedule for all repairs, and which selected various houses at different ends of said Street, intermittently until supposedly all 38 apartments were to be repaired in a manner mandated by the trial judge.

Respondents' continuous harassments in violation of Petitioner's rights as guaranteed by the Fourteenth Amendment included, inter alia, the following:

1) Constant and persistent trespasses upon Petitioner's property, which resulted in frequent vacanies by tenants who objected to Respondents' inspectors, daily presence. (Tr. 296, 355, 402)

2) The making of inside inspections and excessive interrogation of Petitioner's tenants, concerning the names, ages, and occupation of the occupants. (Tr. 297)

3) Causing $1,223.50 to be assessed against Petitioner's property as a result of employing an independent contractor to cut weeds on vacant lots, as well as lots Leased to tenants in occupancy, without prior notice, of any kind to Petitioner as the owner. The amount contrived by Respondents, being excessive and in violation of Petitioner's rights of due process. (Tr. 301, 517)

4) The sending of some forty (40) registered letters to Petitioner demanding repairs to be completed within sixty days.

5) Advising the Circuit Court of Montgomery County, Alabama to violate Petitioner's rights of due process by requesting a supersedeas bond in the amount of $125,000.00 as a condition of stay pending the Appeal of the Alabama Supreme Court.

6) Causing "verified" Complaints to be filed against Petitioner, which included patently false allegations, which Respondents, through its employees and attorneys knew to be false. (Tr. 240, 244, 246, 256, 260, 262, 263, 499)

7) Authorizing a private firm, motivated by the possibility of lucrative fees to be charged to the Petitioner to file nineteen (19) separate actions based on false allegations. (Tr. 482, 485, 496)

8) Requiring the Circuit Court of Montgomery County to appoint sixteen (16) separate Guardian ad Litems,

(Tr. 306) at Petitioner's expense, at a time when Respondents and their attorneys had personal knowledge that Petitioner was the exclusive owner in fee simple absolute as verified by a recorded Deed on file in the Office of the Judge of Probate of Montgomery County, Alabama. (Tr. 247, 250, 251, 486, 492)

9) Respondents' act of unequal enforcement of its Housing and Code Enforcement laws of the City of Montgomery based on personal friendship, acquaintance or race to the detriment of Petitioner, which amounted to invidious discrimination in violation of Petitioner's Constitutional rights to equal protection.

10) Advising the Court to establish a time table for repairs designedly inadequate and insufficient to make the numerous repairs directed by Respondents.

11) Falsely testifying and minimumizing the extent of the repairs which Petitioner had made to the property in question during the trial.

Petitioner argued in the Brief to the Alabama Supreme Court (a) that the trial court committed reversible error, when it failed to rule upon Respondents' illegal entry upon Petitioner's property, and (b) that Respondents misinterpreted the requirements of the Uniform Minimum Housing Code of the City of Montgomery, Ordinance No. 49-63, Section 16.1, which resulted in illegal entries on Petitioner's property in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

An analysis of the conduct of the trial court, as revealed by the judgment and the trial record reveals the existence of

bias and prejudice of which Petitioner complained. The trial court ignored all testimony presented by the Petitioner and his witness because the Petitioner and his witness were members of the Negro race. Petitioner argued on Brief to the Alabama Supreme Court that the trial court believed the testimony as offered by Respondents because its witness was a member of the Caucasion race.

The Alabama Supreme Court, after denying oral argument, agreed that the trial court had established a reasonable time table in order to make repairs, even though the trial court failed to specify a single repair, which in its judgment was necessary.

Affirmance by the Alabama Supreme Court of the trial court's findings resulted in an approval of the double standards adopted by the City which resulted in invidious discrimination against Petitioner because of his race.

The Alabama Supreme Court (Appendix B, *infra* p. A-16–A-21) misread the record in this cause when it stated the following:

> "The record, . . . reveals that Complaints were received from tenants and neighbors, . . . as to the conditions of the property." (Tr. 214, 254, 255)

To the contrary, a painstaking search, totally and unequivocally, reveals that there is not one statement revealing the name of a single tenant or the name of a single neighbor who had complained of the condition of Petitioner's property as the Court opined. (Tr. 214, 254, 255, 256)

Unfortunately, the Alabama Supreme Court was im-

pressed apparently by the false and mendacious statement of one of the sellers of the property, whose intelligence and competence can be judged by the quality of his testimony which the record clearly reveals. Said witness volunteered to appear because of his bitterness over the sale of the property in 1977, which by 1982 had increased in value almost severalfold.

The Alabama Supreme Court's conclusion in this regard is remiss when it assumed that Petitioner bought the property in question at a time when said property was "almost unfit for human habitation," as surmissed by the Respondents' witness, then the Director of the Housing and Code Enforcement Division of the City of Montgomery.

If, indeed, said property was unfit for human habitation, allowing only a few weeks to literally rebuild said property was grossly inadequate, as set by the trial court.

On October 9, 1981, Petitioner sought to Stay the trial court's order on the grounds that the supersedeas bond in the amount of $125,000.00 was grossly excessive and prohibitive.

Another panel of the Alabama Supreme Court entered an Order on October 28, 1981, which states in part as follows:

> "The City of Montgomery on October 23, 1981 filed a response to the Motion for Stay of execution. On examination thereof, the Court has concluded that the City of Montgomery has not satisfactory shown to this Court why there should be a supersedeas bond in the amount of $125,000.00 and further, the City of Montgomery has not

shown to this Court why the judgment appealed from should not be stayed pending an Appeal in this Case."

Said panel stayed, without bond pending further Order of the Court.

REASON FOR GRANTING THE WRIT

This Petition presents two serious and substantial issues involving a denial of Petitioner's rights to an equal protection of the laws and a denial of Petitioner's rights of Constitutional due process by virtue of the affirmance of the trial court's decision by the Alabama Supreme Court, in violation of the Fourteenth Amendment to the Constitution of the United States amounting to reversible error.

Federal Constitutional issues were timely raised during the trial showing that Respondents' agents or employees had specifically conspired to violate Petitioner's Fourteenth Amendment rights by virtue of their repeated acts of harassment, which were admitted at the trial. The trial court was advised by the Petitioner, at the beginning of the trial of the Constitutional issues by the following statement:

> "I would also like to indicate that there appears to have been a conspiracy. There appears to be a lot of people who have been engaged in the conspiracy." (Tr. 186)

* * *

> "The City has engaged in acts of harassment and I am of the opinion that they have violated Federal and State Constitutional rights which I have. Also, they have violated specifically, and I would like to quote the Federal Statutes which they have violated, as

> 42 United States Code, Section 1983, and 42 United States Code, Section 1985, and Your Honor, I believe this Court is under a duty to protect, not only the violation of State rights, but also the violation of Federal rights. (Tr. 187)
>
> * * *
>
> "Your Honor . . . there are some serious problems with regards to the denial of Constitutional due process with regards to the immediate setting of this case without even having sent Counsel written notice, and on two days notice, the amount of time we feel is insufficient and clearly violated the Fourteenth Amendment to the Constitution of the United States." (Tr. 187-188)
>
> "The Court: All right sir. Your Motion to dismiss is denied. Your renewed Motion for continuance is denied. The case was set yesterday, as you know, so you've enjoyed a twenty-four hour delay." (Tr. 188).

Likewise, the Alabama Supreme Court, as the Court of last resort in the Alabama Court system committed reversible error when it effectively closed the door to any consideration of the Federal Constitutional issues raised by the Petitioner to the effect that Respondents had denied Petitioner's rights against harassment in violation of Federal Statutes cited by Petitioner as indicated above.

Speaking for an unanimous Court, Mr. Justice Vinson said in *Young v. Ragen,* 337, U.S. 235, 69 S. Ct. 235, (1949):

> "Of course, we do not review decisions which rest upon adequate non-federal grounds, and of course Illinois may choose the procedure it

> deems appropriate for the vindication of federal rights. . . . But it is not simply a question of State procedure when a State Court of last resort closes the door to any consideration of a claim of denial of a federal right."

Petitioner was amazed to note the final paragraph of the Alabama Supreme Court's opinion which is inconsistent with the record regarding the fact that Petitioner had raised Federal Constitutional issues in the trial court by the following reference:

> "Defendant raises other issues which he claims present Constitutional question. The record fails to discuss that such questions were presented to the Court below; therefore, we cannot address them."

Clearly the Court, undoubtedly, neglected to read, pages 187 and 188 of the trial court's transcript, which shows that the Federal Constitutional questions herein presented were raised in the trial court. Specific questions involving Petitioner's rights of due process and the fact of harassment by the Respondents, City of Montgomery as indicated above. During the course of the trial, Petitioner informed the trial court that it was under a duty to protect Petitioner in the exercise of his state as well as Federal Constitutional rights.

May a State Supreme Court, by a recital of an alleged fact, involving a case on Appeal, as a matter of Constitutional rights, ignore the trial record before it, which results in effectively depriving a person of rights protected by the Constitution and Statutes of the United States?

Having admitted that Petitioner raised on Brief in the Alabama Supreme Court Federal Constitutional issues, the Alabama Supreme Court was under a study to carefully scrutinize the record before it in order to determine what Constitutional issues if any, had been raised in the trial court.

Respondents admitted in the record (Tr. 276, 281, 291, 367, 370) that the former white owners were given the right to make periodic repairs. However, as to Petitioner, a different rule was invoked regarding the making of repairs to the same property. (Tr. 382, 284, 409)

The Constitution prohibits discrimination by States was announced in *Ex Parte Virginia*, 100 U.S. 339; *Strouder v. West Virginia*, 100 U. S. 303 (1879); *Garner v. Louisiana*, 368 U. S. 157 (1961) and *Thompson v. City of Louisville, et. al.*, 362, U. S. 199.

The Court has repeatedly stated that the law is clear that such discrimination based on race or color is equally repugnant. Whether it takes the form of legislation or unequal administration of the law by public authority. *Henderson v. Mayor of New York*, 92 U. S. 259 and *Mooney v. Holohan*, 294 U. S. 103, at page 113,

In *Rogers v. Alabama*, 192 U. S. 226, at p. 230, this Court stated at p. 230 the following:

> "It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect Constitutional rights cannot be declined when it is plain that the result of a decision is to deny the rights."

In *Lambert v. California*, 355 U. S. 225, 228, 78 S. Ct. 240, 243, this Court specifically states:

> "Notice is required before property interests are disturbed before assessments are made, before penalties are assessed. Notice is required in a myraid of situations where a penalty of forfeiture might be suffered for a mere failure to act."

Petitioner testified that Respondents had caused persons to go upon the property involved herein and cut weeds on both Leased and Non-Leased property, to which Respondents had failed to give Petitioner notice when it ordered independent parties to render certain services to be charged against Petitioner. (Trial transcript page 517)

Seeking to determine why the Respondents had failed to provide notice to Petitioner of their intended actions involving the cutting of weeds, the Respondents, through their Director of Housing and Code Enforcement, upon cross-examination, claimed for the first time that certified letters had in fact been sent to the Petitioner regarding their intended actions and further that Respondents had a copy of Petitioner's signature to verify that Petitioner had received proper notice. Upon further questioning, Respondents' witness admitted that he did not have a copy of a return receipt with the information which he claimed to have in his possession. Said witness was not questioned on re-direct on this matter, apparently, because said witness had stated that he did not have the names of Petitioner's agents, who allegedly accepted the notice of the postal record in proof of service.

Upon objection by Respondents regarding the cutting of weeds by the Respondents' agents, the trial court refused to permit further interrogation.

Likewise, the trial court, in violation of Petitioner's Constitutional right to reasonable notice of the trial, over Petitioner's objections, (trial transcript p. 188), said court scheduled the trial of the proceedings with only two days notice, by telephoning the Petitioner's secretary and without ever having sent Petitioner written notice.

Respondents actions were in violation of Petitioner's Constitutionally protected rights involving specific real property. The due process of law clause of the Fourteenth Amendment to the Federal Constitution provides that no state may deprive any person of property without due process of law. An opportunity for hearing is one of the essential elements of due process. *Synder v. Massachusetts*, 291 U. S. 97, 54 S. Ct. 330.

The Respondents, the City of Montgomery, failed to establish that notice of a hearing had been served on the Petitioner regarding the cutting of weeds by its agent at Petitioner's expense. Respondents offered no testimony or proof that notice had been given. In addition, Respondents neglected to cross-examine Petitioner on the matter.

This Court has held on numerous occasions that "the due process clause" of the Fourteenth Amendment to the Constitution of the United States makes, inoperative acts of an agency of Municipal government which fails to give notice and an opportunity to be heard to an owner of property before the issuance of an Order seeking the diminution or the destruction of vested property rights. *Milliken v. Meyer*, 311 U. S. 457; *Walker v. City of Hutchinson*, 352 U. S. 112, 77 S. Ct. 200; *Schroeder v. City of New York*, 371 U. S. 208; *Armstrong v. Manzo, etux*, 380 U. S. 545.

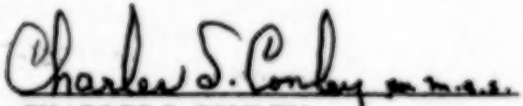
The Respondents failed to give notice of any kind to the

Petitioner and thereby ignored "an elementary and fundamental requirement of due process" in any proceedings seeking the destruction of Petitioner's property rights.

CONCLUSION

For the reasons indicated herein, a writ of certiorari should be issued to review the judgment and opinion of the Alabama Supreme Court.

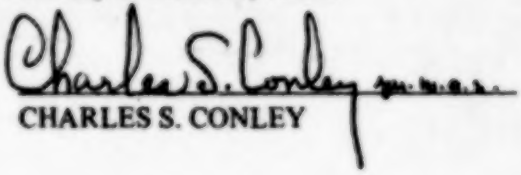
Respectfully submitted,



CHARLES S. CONLEY
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing Petition for Writ of Certiorari has been mailed, postage prepaid first class mail to Hon. Richard C. Belser, Post Office Box 1470, Montgomery, AL 36104, Attorney for Respondents, this 18th day of October, 1982.



CHARLES S. CONLEY